FREEDOM WATCH for February 18, 2011 - Part 1

Andrew NapolitanoAssociated Press

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<Byline: Andrew Napolitano>

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JUDGE ANDREW NAPOLITANO, HOST: The march towards liberty starts now. This is FREEDOM WATCH.(BEGIN VIDEO CLIP)

NAPOLITANO (voice-over): Sick tricks. Tonight, health care waivers were handed out to entire states and not just to any states, swing states like Florida, Ohio and New Jersey. Congressman Michael Burgess wants to know if Obamacare is being used as a political tool in the 2012 election. He's here. And why do some get a pass on Obamacare while others are forced into it? That's what Deroy Murdock is asking. The double standard is unconstitutional. He's here.

Then, Wisconsin on the brink.

(SHOUTING) Unions! Yes!

NAPOLITANO: Our own Stuart Varney predicted this months ago.

VARNEY STUART, HOST OF VARNEY CO.: Flat out bailout money. Are they asking for it in those terms?

NAPOLITANO: Democrats in Wisconsin are running and hiding, but Varney is here and calling them at.

Also, economist and Wall Street guru, David Malpass, on how the GOP may be botching its one chance to get America's fiscal house in order.

All that, and our Freedom Fighters, Lori Rothman, Ellis Henican, Jacob Weinberger on why what's happening in Wisconsin won't stay in Wisconsin. The battle for America's future is now and everywhere, and this is the show that fights that battle with these basic principles: That government is best which governs least. The people are entitled to a government that stays within the confines of the constitution. The constitution was written to keep the government off the people's back.

Burgess, Murdock, Varney, Rothman, Weinberger, FREEDOM WATCH. The revolution continues now.

(END VIDEO CLIP)

NAPOLITANO: Tonight on the docket, we peeled back the onion on Obamacare favoritism. Some shocking new facts you need to know. But first, we return our attention to the incredible events in Madison, Wisconsin where public employee unions have the capitol building under siege. Certain public-sector unions in Wisconsin are furious that Governor Scott Walker wants to strip them of their collective bargaining rights, the right to bargain as a group, instead of as individuals and to force them to make contributions to their pensions and health care plans just like the rest of us do in the private sector.

And this reasonable cost cutting plan has some union protesters comparing the governor to Hitler. Let's hope they aren't history teachers because Hitler committed genocide, and Governor Walker is simply trying to cut his states budget and loosen the stranglehold that public employee unions have had on taxpayers there.

Here now, my Fox Business colleague, my friend and host of Varney Co., Stuart Varney. I got to give you credit, you predicted that this would happen. You predicted even long time before it's happened, and now, Madison Wisconsin almost looks a little like Cairo.

VARNEY: You could see it coming, couldn't you?

NAPOLITANO: Yes.

VARNEY: If you look carefully the finances of individual states, especially the big ones, California and New Jersey, it's had all way down the line, you could see that the crunch was coming. The givebacks of some sort and necessary massive cuts

and services on necessary, you could see it coming, it happened.

NAPOLITANO: Now, you know the law. You know that the laws that require private businesses to negotiate fairly with labor unions and the federal government besides what's fair does not apply to the states, but you also know, and I'm going to blame both parties. I want your thoughts on this. That politicians in both parties, Republicans and Democrats, for generations since the new deal era have given this sweetheart deals to the public sector unions have cowed out (ph) to those union for votes. And now, the chickens are coming home to roost.

VARNEY: Collective bargaining on the part of unions with politicians is inherently unfair and biased. Collective bargaining cannot be done with people to whom you have contributed millions of dollars, who you put into power, who you voted for. There's an inherent conflict of interest. It is not the same as collective bargaining with the private employer. Therefore, collective bargaining has no place, in my opinion, in the public sector.

NAPOLITANO: I am smiling because, of course, our home state of New Jersey, the collective bargaining two years ago was unbelievably unfair when the head of the labor union was also the governor's former girlfriend, but it shows you the depths to which politicians will sink when they try to use tax payer dollars to curry favor with union membership.

VARNEY: Precisely. And that's why we have so many runaway contracts in the public sector. That's why we have cost incurred way down the road, but politicians in office now negotiating with union people who have given them money. It is inherently immoral and wrong.

NAPOLITANO: All right. This morning on your show Varney Co., the only show on a plan that starts at 20 minutes after the hour, 9:20 eastern on the Fox Business Network. Before I was on with you, you were interviewing a labor union official, a some think-tank person, some lefty from Wisconsin, who basically tried to argue that the right to collective bargaining is a natural right akin to speech and thought and religion and travel and privacy.

VARNEY: He did. You are correct, sir. That's exactly what he said. He tried to suggest that collective bargaining was a human right. He defined it as human right because the United Nations defines it as a human right.

Since when did we take any moral authority from a dent of cut to maniacs (ph) who are dictators in the extreme that that's way he was taking his authority from for saying, collective bargaining is a human right? It is not. Judge, you and I know, it is not. It is not a civil right. It is not a constitutional right or anything.

NAPOLITANO: You have the human right to associate with whomever you want, whether it's a labor union or whatever, but you don't have the human right to demand that the government recognize some group and not speak with you individually and that the federal government sanctions that.

VARNEY: Collective bargaining is a form of agreement making sanctioned by legislation or by executive action. On both counts, it can be withdrawn. It's not a basic fundamental right.

NAPOLITANO: Here's why I think he said it's a basic fundamental right because generations have grown up with liberal politicians using government money to win votes by luring the unions and treating them as if they have this as a natural right.

VARNEY: And also, because we live in a generation, in an era, in which rights are constantly put forward. Everybody has rights. When are we going to start talking about responsibility?

NAPOLITANO: Very nicely pledge. And I would also argue that people confuse rights with goods. I mean, we'd heard the president say health care is a right. It's not a right. It's a good. You can afford it if you purchase it. Switching gears, does the government even belong in the business of education? It doesn't sell us shoes or hats or clothes or food. Why should it sell us? Why should it force us to buy from it with our tax dollars, the lousy schools that it gives us?

VARNEY: I will not argue on grounds of principle with you.

(CROSSTALK)

(LAUGHTER)

NAPOLITANO: Get me a slice of that cake.

(LAUGHTER)

VARNEY: I will argue on the grounds of practicality.

NAPOLITANO: Sure.

VARNEY: This government runs our educational system and has ruined it. On the ground of practicality, I would say, that the government has no right. There's no cause for it to be in the education business because it's done such a terrible job.

NAPOLITANO: Here's my argument. There's no choice and there's no competition. If we could go elsewhere, if I could send my tax dollars to another school, that would help make the public schools better because they know that tax money is going to come and the kids are going to show up in the classroom no matter what kind of a lousy job they do because taxpayers have no choice.

VARNEY: Now, perhaps, we can agree on this. I have no problem with taxation going towards education so long as education delivered privately, and I, the parent, have a choice as to which education establishment gets my tax dollars. Are you OK on this?

NAPOLITANO: Varney, this is scary when you and I are starting to agree on things.

Of course, I could go a little bit further and say that taxation is theft, but that's only (INAUDIBLE).

VARNEY: I tried to open the door for you, judge.

NAPOLITANO: That's a pleasure. Stuart Varney, thank you. This is a dramatic moment in our history. Last question, is Chris Christie going to have to shout down these characters the way Scott Walker is trying to do?

VARNEY: As we speak, the White House political operatives are, indeed, organizing organized labor in states outside of Wisconsin, outside of Ohio. Yes, it's going to go national.

NAPOLITANO: White House. Unbelievable. Stuart, it's a pleasure. Thanks for joining us.

And now, we move to the topic of healthcare favoritism. The Obama administration has granted, at least, 915 waivers to companies and unions exempting them from Obamacare. Why is the president exempting companies in unions from his own beloved law? Here now with the answers, Texas Republican congressman and physician, Michael Burgess. Dr. Burgess, welcome to FREEDOM WATCH. REP. MICHAEL BURGESS, (R) TEXAS: Well, judge, it's always great to be with you.

NAPOLITANO: What do you think the president is up to? I mean, first, the labor unions and then some well-known companies, the names of which we all recognize like McDonald's and Harley-Davidson, and now, even some states of the union. I mean, what is his motivation here?

BURGESS: Well, I think the motivation is that this thing doesn't work. And rather than just admit it doesn't work, acknowledge that we'd better get back to the drawing board and make it work if he's serious about his signature legislation, they decided to go that, well, let's just try to patch things together route. To patch things together route began to emerge in late October with one, two, three, then 15, then 25, then 50 waivers.

And now, as you point out, we're up to nearly 1,000, and indeed, we have whole states applying for and being accepted for waivers. Does this tell you something about what a bad piece of legislation this was that got signed into law? We're not even a year into this thing and to 2 1/2 million people have now been exempted. And this is just the tip of the iceberg.

NAPOLITANO: You're right on the mark, congressman. And you're a doctor, you know how to do basic math. If you take all the states that even received waivers from this or have challenged it in court and add up all their electoral votes, that's more than half. That would defeat the president. So, is it a coincidence that he's looking at places like Florida, Ohio, and even my own home state of New Jersey, perhaps, to lessen the burden of federal law and entice more people to vote for him? I mean, do we have a rule of law or rule of man in this country?

BURGESS: Well, I think you can see which direction is going today. Their problem, of course, is if it's purely electoral college calculation, there problem is the waivers are for one year. So, they will have to be extended in October or November of next year to get passed that election milepost. But here's the thing that is really just driving me crazy. If they are requiring all these companies and people are requiring waivers now, what in their projections going forward leads them to believe that this is going to work any better six months, eight months, 12 months from now?

And if there really is no indication that things are going to be any better then, then what is plan B in this institute? Where do you go from here? We had a hearing about just the other day. And Mr. Larson who's the head of the Center for Consumer Information and Insurance Oversight said, well, the plan B is popoka (ph) which is what we called the Obamacare, the Patient Protection and Affordable Care act. That is not plan B, judge.

NAPOLITANO: Right.

BURGESS: That's where we're starting from now. And if that's plan B, we're in the world of hurt (ph).

NAPOLITANO: Congressman Burgess, the Republicans control the House of Representatives. This is a major, major opportunity to drive a truck through this weak, thin wall of Obamacare, but one of the ways I would suggest you might want to do it is through public hearings. Put Secretary Sebelius under oath and compel her to justify and explain, Congressman Burgess, every single one of these 915 waivers, and why she's enforcing the law against some people and not against others?

BURGESS: That is an excellent point, and Secretary Sebelius will be coming to our health subcommittee the first week in March. That is about a year late, according to my estimation. Now, the Democrats, we're not interested in doing oversight hearings. When Republicans did take over, the 3rd of January, and those oversight hearings are, indeed, in the works now. It took a little to get committees ramped up, but they're going now, and Secretary Sebelius is on the list, and she will be there right after next week, and she'll be in the week after that.

I sent her a letter earlier this week. I said, look, there's a judge down in Florida, very learned (ph) man, wrote a very good opinion, you ought to read it, because in that opinion, he said officers of the executive branch will not proceed with implementation. They will not violate the will of the court. Well, I'm sorry, I think Secretary Sebelius is violating the will of the court.

NAPOLITANO: Right.

BURGESS: So, I send her a letter and said, please help me understand what you are doing now to delay implementation, so you're not running counter what the judge recommended.

NAPOLITANO: When she comes to you and answers that question, answers that

letter, we want you back on FREEDOM WATCH. Congressman Burgess, thanks for joining us.

BURGESS: Thank you, judge.

NAPOLITANO: Exemptions for companies and unions and for states of the union's. Sure it's unfair, but it's also unconstitutional. We'll talk about that next.

(COMMERCIAL BREAK)

NAPOLITANO: The health care waiver issue is more than just connected friends of the president being exempted from the draconian and onerous rules of Obamacare. My next guest argues that this preferential treatment for some violates the 14th Amendment and the 5th Amendment's equal protection requirements.

Joining me now, syndicated columnist, Deroy Murdock. Deroy, it's a pleasure. Thanks for coming in. So, we have the Obama administration exempting some companies. We know the names of some of them, McDonald's and Harley-Davidson. They have been exempt in labor unions. Now, we have them exempted certain states from the pain and the crush of Obamacare. What do you think about that?

DEROY MURDOCK, SYNDICATED COLUMNIST: Well, we have a real problem here which is that this bill was supposed to be something that would answer all of our prayers and with this wonderful coverage and all this. And you've got people running like hell away from Obamacare. You know, 950 waivers have been granted by the Department of Health and Human Services, and you just have this one carve out after another. It was, early on, the unions and some big corporations like AETNA and CIGNA. And as you said, now you've got New Jersey, Ohio, and Tennessee which have gotten large exemptions from the requirements of Obamacare.

NAPOLITANO: Let's talk about the constitution without getting into the wits (ph). The constitution basically requires the government, the federal government and the state governments, to treat similarly situated people in a similar manner, and of course, the president takes an oath to uphold and enforce the law. All the laws, not just the laws from which he's getting some political blow back.

So, how does the Obama administration even justify letting companies as wealthy as McDonald's, unions as powerful as the UAW, state population rich as Florida and New Jersey off the hook when everybody else is on the hook?

MURDOCK: Well, their argument is that if you have an increase in premiums or a decrease in access to healthcare, you can get a waiver. But, of course, again, this goes totally against what we heard about Obamacare and what's been debated that it was going to increase access and lower cost, and everybody has so much more health care bill of what lower prices. And so, that's their claim. Now, they ought to be able to give everyone America waiver. We all that waivers and this would be a problem

NAPOLITANO: Well, you know, we have the issue of Judge Roger Vinson in Florida, in

Pensacola, Florida, who declared Obamacare unconstitutional but did not prevent the government from enforcing it. The government is going back before Judge Vinson saying, hey, what do we do? Because some governors are saying it's unconstitutional, we're not going to follow it.

And some governors are saying, hey, judge, you only have authority in Florida. I suggest to you, if Judge Vinson enjoins stops the federal government from enforcing this, the states will save billions while this makes its way to the Supreme Court.

MURDOCK: You're absolutely right. Because as it is, states have got to spend money to start these insurance exchanges and do basically put and allow the bureaucratic infrastructure for the state side of Obamacare. And if turns out after a year, if the Supreme Court throws that out, all those people will have been higher for no purpose. All these systems will be put in for no reason at great expense while states are really trying very hard to get by with huge state deficit.

NAPOLITANO: Deroy, what is your gut instinct on this one? Are the decisions to grant exemptions at base political decisions? Is the president looking at 2012? Is the president a hopeless situation in 2012 with your Electoral College list there?

(LAUGHTER)

MURDOCK: Yes. What's very interesting about this is if you look at the 28 states, they're involved in suing to overturn Obamacare. We're talking about 164 million people in the states, about 54 percent of population, and 285 electoral votes. So if it turns out that Obamacare is thrown out by the Supreme Court based on these lawsuits are going though, and let's say that those states vote against Obama, he gets 253 electoral votes which is 17 short of what he needs to get re-elected.

NAPOLITANO: Wow.

MURDOCK: So, if this suits, if they go through and if people actually end up voting the way the suits go, if it gets thrown out, then he's a one- term president.

NAPOLITANO: Can we make the argument that he gave the exemption to Florida because he's looking for votes there? That he gave the exemption to New Jersey which has voted for Democrats for years, although, we now have the quintessential conservative Republican governor? That he wants to weaken Governor Christie's influence there?

MURDOCK: It's hard to say. I mean, you could make that argument or just say that they're doing what they thought they should do according to application of the waivers. But when you do these sorts of things, you raise these questions, and that sort -- just raising the questions weakens the rule of law.

NAPOLITANO: Absolutely. The rule of man making decisions based on politics rather than officials enforcing a law. Deroy Murdock, it's a pleasure. Thanks for joining us.

Is there a rift in their grand old party? Some say yes. It's time for a new strategy,

the master plan, or one of them, next.

(COMMERCIAL BREAK)

NAPOLITANO: It's no secret that the debate over the debt ceiling and government spending has revealed a huge rift in the Republican Party. On one side are tea partiers and defenders of the free market who oppose raising the nation's debt and want to slash spending severely. On the other side are establishment Republicans who propose a raise on the nation's debt with certain restrictions and are pushing for more moderate cuts.

My next guest says the Grand Old Party needs a new strategy. Joining me now is David Malpass, former deputy assistant treasury secretary in the Reagan administration and now president of Encima Global. David, it's a pleasure. Welcome here.

DAVID MALPASS, ENCIMA GLOBAL PRESIDENT: Hi, judge.

NAPOLITANO: Here's my argument. The Republicans gave the Democrats a shellacking, the president's term last November. And they campaigned on small government sound money fidelity to the constitution and no more borrowing and spending. What will happen, in your view, to the Republican control of the House of Representatives if they go along with Republican leadership and let the president raise the debt ceiling rather than going along with most of the freshmen on the tea partiers who say no, no more borrowing, let the consequences fall where they may?

MALPASS: You're not going to like it, but I'm going to argue for raising the debt ceiling and then converting it into a different kind of debt ceiling. The way they have the debt ceiling written right now, it's on statutory debt. The money has already been spent. And so, it's very hard not to and certainly going to be increased. And so, the goal --

NAPOLITANO: What do you mean the money has already been spent?

MALPASS: If they shut the government down tomorrow, you'd still be having bills coming in from the last three months.

(CROSSTALK)

NAPOLITANO: Senator Toomey from Pennsylvania has argued persuasively in a long piece in the Wall Street Journal that there are enough tax dollars coming in to pay our debt obligations first that will be no default, and then, the president has hard choices to make. What's wrong with that?

MALPASS: Because the hard choices are not going to be popular to the public. The Republicans will lose in that strategy.

NAPOLITANO: Won't Republicans lose if they allow the spending to continue? Won't they be perceived as caving into the allurements of Washington rather than the tea

party folks back home who sent them there?

MALPASS: They will, and we cannot let them do that. That's critical that they actually reduce government and reduce spending, but they can't do it by stopping that particular debt limit.

NAPOLITANO: Well then, what do you think they should do?

MALPASS: They should convert to a debt limit that won't go up of all the time. That would be a marketable debt to GDP ratio, for example, and that makes a lot of sense. Meaning the debt relative to the economy to be 50 percent no more.

NAPOLITANO: All right. Here is the problem. You have a numerical ratio or formula that tells you when the debt comes up. And the president wants to borrow any way and the Congress says, well, you reach the formula. Where do they go to? The court. You can have a judge deciding whether or not the president can borrow more money rather than the elected representatives of the people?

MALPASS: You don't want to throw out the good for the perfect. And so, if there above it, somebody will sue and say, no, we're not really above it. But how long can they -- I'm talking about a limit, a ceiling on the debt that might last for 50 years. One word so you can argue. This year, we get to spend a little more, but then next year, it's going to come right back at you. So, its a permanent ceiling on the debt. That's not what we have now.

NAPOLITANO: Will your argument play with the voters? Or stated differently, will all those young, fresh libertarian oriented tea party freshmen in the Congress lose their jobs if, under any circumstances, they vote to raise the debt ceiling?

MALPASS: This is why it's critical that Republicans talk about it and have a strategy and presented to the public. The goal is to win the public over, that they have a plan that will actually cut spending. The risk that we're out right now is that the president will win. Remember what happened with Bill Clinton, the Gingrich Republicans shut down the government and it really hurts.

NAPOLITANO: Wasn't that a sales job where Clinton used his personality to make it look like the Republicans have shut down the government when (ph) he did?

MALPASS: They'll do the same thing this time. There's no difference.

NAPOLITANO: But isn't the public's attitude about government so different today that, so what? Shut it down for a couple of months. Let's see what happens? It'd be nice if the Congress didn't get their pay checks. I can hear that on the news.

MALPASS: I'd be very happy if they didn't get their paychecks, but what the president will do is stop all of the things that people actually want done by government.

NAPOLITANO: Got it. David Malpass, a pleasure. Great conversation. Thanks for

coming here.

And now a few items from our Freedom File. In Houston, Texas, a group of policeman brutally beat a burglary suspect named Chad Hollow (ph). Now, Mr. Hollow was eventually convicted of the crime of burglary, but the time of the beating, he was, of course, innocent as we're all until convicted by a jury of our peers as the constitution requires. And no person regardless of any crime he may or may not have committed should be beaten.

The police chased Mr. Hollow down the street, hit him with the car, swarmed on him, punched him, and kicked him. Seven officers were fired over the incident, and four of them face criminal charges, but the savage beating of Mr. Hollow endured and is all too common from the police in America today.

A JFK International Airport here in New York to TSA goons noticed a $7,000 in cash checked in the bag conducting an unconstitutional x-ray search of the bag. So, they help themselves to $40,000 of the cash from the bag. The two agents were caught. This highlights the fundamental problem with the TSA. The government simply has no right to search your personal property, unless, it has a warrant from a judge.

The constitution guarantees this, but now, every TSA agent, constitutionally or not, can search your bag without your knowledge or consent. Is it any surprise that some people's property will end up missing?

The 2011 budget of President Obama's Department of Health and Human Services is about $910 billion. This is the department charged with implementing Obamacare, adjusted for inflation because of President Lyndon B. Johnson's entire federal budget in 1965 was 823 billion. What's the significance? 1965 was the year LBJ introduced Medicare and Medicaid.

And 46 years later, the Health and Human Services Department that does nothing but unconstitutionally take money from some and give it to others is bigger than the entire government was when America was first introduced to socialized medicine.

It's the biggest gathering of liberty loving youth in the country. Meet two young leaders determine to bring the message of freedom to their peers. Next.

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